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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,064	12/13/2001	Robert Henry Rohrbaugh	8803	9885

27752 7590 12/01/2003

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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BRUNSMAN, DAVID M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/020,064

Applicant(s)

ROHRBAUGH ET AL.

Examiner

David M Brunzman

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 13-23 and 26-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1755

Applicant's election with traverse of group I, claims 1-12, 24 and 25, wherein the nanoparticles is fluorohectorite in Paper No. 7 is acknowledged. The traversal is on the ground(s) that there would be no burden on the office to examine both groups of the invention and that the requirement for election of the species fluorohectorite is contrary to MPEP 806.04(a) stating applicant is entitled to claim a reasonable number of species. This is not found persuasive because with respect to group II there would be an additional burden on the office to examine both groups of claims because the search required for each group is not coextensive.

Applicants' argument with respect to the requirement for election of species is not found persuasive because applicant has been allowed to elect a reasonable number of species. Immediate examination of additional species would require expenditure of substantial additional office resources which would be unreasonable. Further, the elected species reads on at least three distinct commercial products Laponite B<sup>TM</sup>, Laponite S<sup>TM</sup> and Laponite JS<sup>TM</sup>.

The requirement is still deemed proper and is therefore made FINAL.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope and meaning of the term "non-functional" is indefinite as it fails to recite the "function".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1755

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-12, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarthy et al.

Example 8 of the reference discloses a film comprising fluorohectorite on a polymeric substrate in an amount of about 0.5 mcg/cm<sup>2</sup>. The deposited film is dried (see column 4, line 6) and not disclosed as having any residual water content. The small amount of material per unit area would be expected to exhibit a film thickness less than 300nm. The minimal particle size of Laponite<sup>TM</sup> products would cause formation of transparent coatings. Additional properties disclosed by applicant for the invention of the instant claim would be expected to be exhibited by the product of the reference as similar materials are used to form the films of each.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5989696, as applied above, in view of American Heritage Dictionary entry for "wetting agent".

The difference between the prior art and claim 8 is the addition of a wetting agent. The addition of a wetting agent to a film forming composition like that of the prior art would have been obvious to one of ordinary skill in the art because the definition of "wetting agent" teaches that it will cause a liquid to spread across and penetrate a surface more easily.

In order to provide a complete record, examiner requests applicants provide copies of the non US Patent references cited as the parent application file is not easily available.

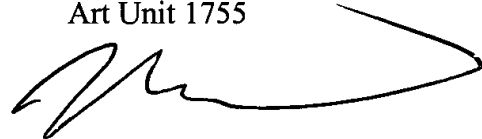
Art Unit: 1755

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Brunzman whose telephone number is 703-308-3454. After 23 December 2003, the examiner can be reached at 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 703-308-3823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

David M Brunzman  
Primary Examiner  
Art Unit 1755



DMB